



Walter D. Cruickshank,
Acting Director, MMS
Department of the Interior; MMS
Attention: Amy C. White, RPT
381 Elden Street, MS--4024
Herndon, VA 20170-4817

RE: Alternate Energy-Related Uses on the Outer Continental Shelf

28 February 2006

Dear Mr. Cruickshank:

On behalf of the 70,000 members and constituents of the Whale and Dolphin Conservation Society (WDCS), I would like to offer the following comments regarding the proposal to develop a regulatory program for alternate energy-related uses on the outer continental shelf [RIN 1010-AD30].

The WDCS appreciates the efforts by the Mineral Management Service (MMS) to pursue regulations for siting and other aspects of alternative energy development in the marine environment. While we support the need to explore alternative fuel resources, we also support the protection of marine mammals and habitat essential for their survival. We believe that there are a number of issues which merit comments but we are focusing our comments on impacts to marine mammals.

Siting Consultation

We would like to address our primary concern of siting offshore energy facilities. The development of any type of offshore energy facility has the potential to negatively impact sensitive marine ecosystems. We also believe it is vital for the MMS to consider the cumulative impact on marine mammals that will result from the proposed facility. As such, we recommend that the MMS immediately consult with the National Marine Fisheries Service (NMFS), the U.S. Fish and Wildlife Service (USFWS), the Marine Mammal Commission and other relevant state and federal agencies and research organizations. This will ensure that adequate knowledge of marine mammal use of the proposed area is available to MMS and that the proposed development in these areas takes account of this knowledge and is used in ensuring there is no adverse impact on marine mammal populations and their habitats.

For example, Horseshoe Shoals, the location of the Cape Wind proposed site, is not a well-surveyed area for marine mammals. As a result, sightings on the Shoal are incidental. Primary survey efforts for seals in the area have focused on their haul out sites, as it is difficult to document pinniped populations in the water. However, anecdotal and stranding data indicate that marine mammals occur here year round. More

importantly, telemetry data shows the area is used by the critically endangered North Atlantic right whale.

Conversion Policy

The WDCS does not support the automatic conversion of an existing facility (ex: aquaculture, oil and gas platform, etc) for use as an alternative energy facility. The permit or lease granted for the original facility may not have taken into consideration all potential environmental impacts of the proposed facility as the evaluation criteria in this regard may have changed across the years resulting in a higher set of standards applying. Furthermore, an environmental impact study for the development of an aquaculture facility may not have included acoustical impact studies necessary for the placement of a wind facility. The sound generated during the construction phase of a wind tower may result in harassment of marine mammals. As such, we do not support the conversion of existing facilities nor do we support the MMS allowing the transfer of a lease to a secondary owner without a full updated environmental impact being undertaken taking account of the change of use and the higher environmental standards that are required of new facilities of the same nature. To not require this will put new operators at a commercial disadvantage compared to secondary owner operators.

Permits

The WDCS believes that permits must be in place for a finite time (e.g. 20 years or 10 years renewable for a further 10 years subject to a clean environmental audit at the 10 year mark) and a thorough environmental review, including potential cumulative impacts from other sources, must be considered prior to renewing the permit. The permit applicant must: take full responsibility for all direct and indirect environmental damages resulting from their facility; have a workable decommissioning plan; and must ensure that foreclosure, or economic issues will not result in an abandonment of the facility. The MMS should include a revocation provision in the event of permit violations. In all instances the MMS should require guarantees or appropriate insurance cover from the facilities owners, bankers or insurers providing sufficient financial cover to undertake the decommissioning and habitat restitution work at the end of the permit or in the event of abandonment of the facility. Evidence should be provided annually and failure to do so would be sufficient grounds for a permit revocation without notice.

Risk Analyses

We acknowledge the lack data regarding impacts from offshore, alternative energy facilities in the US. However, we caution the MMS when using risk analyses conducted for European facilities. While European facilities may consider impacts to pinnipeds, few studies include the impacts to baleen whales, species that should be considered for both the east and west coasts of the US. Therefore, we suggest the MMS consider the most conservative analyses done elsewhere while acknowledging these as a minimum



standard for the US. Thorough risk analyses and assessments should be conducted by qualified and experienced personnel and should be subjected to peer and public review.

Monitoring and Enforcement

The MMS should require multi-year surveys of marine mammal populations prior to construction to obtain base line data. Monitoring must continue throughout construction and operation with reports made public on, at least, an annual basis. If adverse impacts are noted, pre agreed mitigation measures must be implemented and, in situations where mitigation methods do not work, escalation of the mitigation measure to a point where they are effective or, ultimately, the facilities must be decommissioned. Surveys and enforcement should not be done by the facility, but should be done by an independent contractor to the MMS to prevent bias. The MMS should oversee all monitoring, inspections, and enforcement and produce an annual report for public review.

Public Trust

The Outer Continental Shelf (OCS) is a public trust and, as such, the MMS should set fees for use of the OCS including the sea surface, water column and sea floor based on the net present value of the economic life of the facility across the life of the permit. The MMS should require a surety bond in the event of default of environmental damage.

Conclusion

The WDCS acknowledges the detrimental impacts of climate change on the marine ecosystem and the need to explore alternative energy resources to offset this impact and seek to slow and reverse these changes. We also believe that the MMS must recognize that even alternative energy facilities are, themselves, industrial complexes that may adversely impact sensitive marine ecosystems. As such, we believe that siting these facilities to minimize impacts on the marine environment is critical. The MMS must ensure that the adequate data are obtained from each site, cumulative impacts are considered, and a workable monitoring and enforcement plan is in place before facilities are permitted.

Thank you for the opportunity to comment.

Sincerely,

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Biologist

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